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12 THOMPSON PACIFIC CONSTRUCTION

13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **SAN FRANCISCO DIVISION**

16 THOMPSON PACIFIC CONSTRUCTION, INC. ) **Case No: C 07-02641 CRB**  
17 Plaintiff, )  
18 vs. NAVIGATORS INSURANCE COMPANY; ) **JOINT CASE MANAGEMENT**  
19 and DOES 1 through 50, inclusive, ) **CONFERENCE STATEMENT**  
20 Defendants. )  
21 ) **Date: October 26, 2007**  
22 ) **Time: 8:30 a.m.**  
23 ) **Dept.: 6**  
24 ) **The Honorable Charles Breyer**  
25 )  
26 ) **Complaint Filed: April 13, 2007**

27 Plaintiff Thompson Pacific Construction, Inc. and defendant NIC Insurance  
28 Company (incorrectly sued as Navigators Insurance Company) hereby submit this Joint  
Case Management Conference Statement. Thompson Pacific Construction initially filed  
this insurance coverage lawsuit, pursuant to California Insurance Code section 11580, in  
Alameda County Superior Court.

27 The parties voluntarily agreed to proceed with private mediation. An all day  
28 mediation took place on August 29, 2007 with Michael Timpane of Timpane ADR acting

1 as private mediator. A second session was held on October 11, 2007. The matter has not  
2 settled.

3 **1. Jurisdiction and Service:**

4 NIC Insurance Company removed the action to this Court on the basis of diversity  
5 jurisdiction. The amount in controversy exceeds this Court's \$75,000 minimum  
6 jurisdictional requirement. Counsel for NIC Insurance Company has accepted service.

7 There are no other parties in this action.

8 **2. Brief Description of Claims and Defenses:**

9 This is an insurance coverage dispute which is proceeding under California  
10 Insurance Code section 11580. Defendant NIC Insurance Company insured Jim Bird  
11 Construction, Inc., an underground pipeline subcontractor. Thompson Pacific retained  
12 Jim Bird to work on the Monterey trail project in Elk Grove, California. The contract,  
13 executed on April 1, 2002, called for installation of water lines, gas lines, fire water lines  
14 and sewer lines. Problems arose. Jim Bird essentially abandoned its work.

15 Thompson Pacific sued Jim Bird in Sacramento County Superior Court. The  
16 settlement included a stipulation from NIC that Thompson Pacific could proceed against  
17 it, pursuant to California Insurance Code section 11580, to recover the extent to which  
18 the settlement may be covered by the NIC policy, if any.

19 After Jim Bird abandoned and in an attempt to put the work to its intended use,  
20 Thompson Pacific discovered a multitude of problems, allegedly resulting in both repairs  
21 to Jim Bird's poor work and third party property damage. Because of the length of time  
22 required to complete, Thompson Pacific also claims a significant loss of use claim.  
23 Thompson Pacific has agreed that its recovery is limited, at most, to the \$1 million NIC  
24 policy limits.

25 **3. Legal Issues:**

26 The NIC policy is written on the standard ISO form CG001(7/98) which include  
27 "products - - completed operations" coverage. The policy includes the standard

1 definition of "property damage" as well as the standard property exclusions. Thompson  
2 Pacific recognizes that the NIC policy is not a performance bond for its insured's poor  
3 work. However, Thompson Pacific takes the position there is significant third party  
4 property damage, including loss of use which is recoverable under the NIC policy. NIC  
5 disagrees, asserting a variety of coverage defenses, including the lack of covered property  
6 damage, the application of the "your work" and/or "your product" exclusions, and  
7 subsidence exclusion.

8 **4. Motions:**

9 There are no pending or prior motions. Summary judgment motions are  
10 anticipated should the matter not resolve.

11 **5. Amendment of Pleadings:**

12 No amendments are contemplated at this time.

13 **6. Evidence Preservation:**

14 Thompson Pacific provided voluminous documentation in the underlying action.  
15 Those materials are available for additional review along with additional documents  
16 recently provided. The parties do not contemplate use of e mails, etc. as the matter is  
17 proceeding pursuant to stipulation, attached as an exhibit to the complaint.

18 **7. Disclosures:**

19 The parties are in the process of preparing initial disclosures to be exchanged two  
20 weeks from this hearing or November 9, 2007.

21 **8. Discovery:**

22 There has not been any formal discovery to date. Thompson Pacific has provided  
23 back up documentation to support its damage claims. Some further document  
24 productions are contemplated. Depositions of percipient witnesses and experts may be  
25 undertaken.

26 **9. Class Action:**

27 This is not a class action.

1           **10. Related Cases:**

2           Judgment has been entered against Jim Bird, the NIC insured, in the underlying  
3 Sacramento County Superior Court liability lawsuit. There are no other pending related  
4 cases.

5           **11. Relief:**

6           Thompson Pacific seeks damages up to the NIC \$1,000,000 policy limits, as  
7 stipulated to by the parties. Thompson Pacific takes the position the damages are  
8 supported by Thompson Pacific's records and documents reflecting recoverable sums  
9 under the NIC policy issued to Jim Bird.

10           **12. Settlement and ADR:**

11           As noted, the parties mediated this matter on August 29, 2007 and October 11,  
12 2007.

13           **13. Consent to Magistrate Judge For All Purposes:**

14           Thompson Pacific did not consent to a Magistrate Judge for all purposes and the  
15 matter was reassigned to this Court.

16           **14. Other References:**

17           There are no other references anticipated at this time.

18           **15. Narrowing of Issues:**

19           The dispute here is primarily the amount of recoverable damage. Should the  
20 matter proceed to trial, it may be possible to proceed on stipulated facts as set forth in the  
21 stipulation attached to the complaint and as may be further agreed by the parties.

22           **16. Expedited Schedule:**

23           The parties are actively pursuing resolution and are not prepared to address an  
24 expedited schedule at this time.

25           **17. Scheduling:**

26           The parties have deferred scheduling issues during the efforts at early resolution.

18. **Trial:**

Thompson Pacific requests a jury, should this matter proceed to trial. NIC contends that Thompson Pacific has waived its right to a jury trial because it failed to make a demand for jury within ten (10) days after removal. Thompson contends NIC has not suffered any detriment or prejudice by this jury demand and will move for relief, if necessary. Thompson Pacific believes its jury demand meets the requirements of FRCP Rule 38(b). If the Court disagrees, Thompson Pacific requests an opportunity for additional written briefing.

19. **Disclosure of Non-party Interested Entities or Persons:**

As the matter has not settled, Thompson Pacific is in the process of filing the "Certification of Interested Parties or Persons" required by Civil Local Rule 3-16. However, Thompson Pacific is unaware of any persons, firms, partnerships, corporations or other entities having a financial interest, or any other kind of interest, in the outcome of this proceeding other than plaintiff and defendant. NIC filed its Certification of Interested Parties or Persons in conjunction with its Notice of Removal.

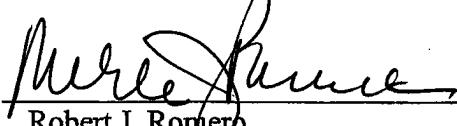
20. **Other:**

Not at this time.

DATED: October 24, 2007

HINSHAW & CULBERTSON LLP

BY:

  
Robert J. Romero

Merle J. Panick

Attorneys for Plaintiff

THOMPSON PACIFIC CONSTRUCTION

DATED: October 24, 2007

BURNHAM & BROWN

BY:

  
Elizabeth Kim  
Attorney for Defendant  
NIC Insurance Company